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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Park B. Smith, Inc.,

Plaintiff,

v.

CHF Industries, Inc.,

Defendant.

*Motion granted. Plaintiff
may move until 2/10/10
to file opposition. Reopen-
date may until 3/8/10
to reply. So ordered.*

*Th. N.
C84) 1/28/10*

*LMM
12*

Case No. 06CV869 (LMM)(JCF)

MEMO ENDORSED

**PLAINTIFF PARK B. SMITH, INC.'S MOTION FOR EXTENSION
OF TIME TO FILE OPPOSITION TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT OF NON-INFRINGEMENT,
OR IN THE ALTERNATIVE, INVALIDITY**

Plaintiff, Park B. Smith, Inc., ("PBS") respectfully moves for an extension of time to serve and file its Opposition to Defendant, CHF Industries, Inc.'s ("CHF") Motion for Summary Judgment of Non-Infringement, or in the Alternative, Invalidity of U.S. Patent Nos. D505,039 and D493,651 ("SJ Motion") (Docket No. 75).

The reason for the requested extension is that many issues were raised during deposition of Plaintiff's expert, Mr. Ori Katzin, who had submitted two Declarations in this action. The deposition was conducted on January 12 – 13, 2010. Mr. Katzin's two Declarations were relied on by CHF in its SJ Motion, and additional time is needed for counsel for PBS to review the lengthy

transcript, consult with a proposed Declarant in view of the many issues covered in that two-day deposition, and prepare the Opposition.

Original Date

The SJ Motion was filed on April 16, 2009. The original date for filing an Opposition to the SJ Motion was July 15, 2009, by Order to Extend Time dated May 5, 2009 (modified on May 8, 2009) (Docket No. 78).

Requested New Date

The requested extension is 14 days from the present due date of January 27, 2010 (which according to the previous Revised Scheduling Order dated October 13, 2009 is fourteen days after the last deposition taken by PBS) to February 10, 2010.

Previous Extension Requests

The SJ Motion was filed on April 16, 2009, and a 30-day response would have made an Opposition due on May 15, 2009. Plaintiff's former counsel had requested and obtained a 60-day extension, as reflected in the Order to Extend Time (Docket No. 78) to July 15, 2009. Subsequently, after Plaintiff engaged its new present counsel in July, 2009, Plaintiff sought and was granted a 90-day extension until October 14, 2009, by Revised Scheduling Order entered July 16, 2009 (Docket No. 88). Subsequently, the parties filed a Joint Motion to extend time on October 13, 2009, so that the parties could arrange a time to schedule the deposition of Mr. Katzin. That deposition was taken on January 12 – 13, 2010. According to the previous Revised Scheduling Order dated October 13, 2009, Plaintiff's Opposition would be due two weeks after that deposition was conducted, which present due date is January 27, 2010.

Consultation with Opposing Counsel

Plaintiff's PBS' counsel has consulted with Defendant CHF's counsel, Stephen L. Sulzer, by telephone on January 22, 2010, and with Todd P. Taylor on January 25, 2010, and Defendant CHF stated that it would not oppose a motion to extend the time until Friday, February 5, 2010. The present motion seeks an extension until February 10, 2010.

Other Dates Affected

The only other date affected is the date for Defendant CHF to file a Reply to Plaintiff's Opposition. The present due date for the Reply is 30 days after Plaintiff PBS files and serves its Opposition to the SJ Motion. That date would change from February 24, 2010 to March 12, 2010.

A [Proposed] Revised Scheduling Order setting forth the new dates is attached.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on January 25, 2010, I electronically filed a copy of the foregoing *Plaintiff Park B. Smith, Inc. 's Motion for Extension of Time to File Opposition to Defendant's Motion for Summary Judgment of Non-Infringement, or in the Alternative, Invalidity* with [Proposed] Revised Scheduling Order using the United States District Court, Southern District of New York's electronic filing system, in which electronic notice will be made to all parties, and which thereby constitutes service in accordance with Local Civil Rule 5.2.



Peter J. Phillips